

AMENDED IN ASSEMBLY AUGUST 25, 2005

SENATE BILL

No. 660

Introduced by Senator Kuehl
(Coauthors: Senators Alquist and Romero)
(Coauthors: Assembly Members DeVore and Leno)

February 22, 2005

An act to add Section 48906.5 to the Education Code, relating to public schools.

LEGISLATIVE COUNSEL'S DIGEST

SB 660, as amended, Kuehl. Public school pupils: interrogation.

Existing law, with certain exceptions, requires a principal or other school official to immediately notify a pupil's parent-~~or~~, guardian, *or responsible relative* if the official releases a pupil to a peace officer for the purpose of removing the pupil from the school premises.

This bill, with certain exceptions, would require the principal of a school to take immediate steps to seek the consent of the parent-~~or~~, guardian, *or responsible relative* of an elementary school pupil prior to making the pupil available to a peace officer for questioning, and with certain exceptions, would prohibit making the pupil available for questioning if the parent-~~or~~, guardian, *or responsible relative* requests that the pupil not be questioned until he or she can be present. The bill would permit a member of the school administration, a school counselor, or a school teacher, selected by the pupil, to be present at the questioning under prescribed circumstances.

This bill would require the principal, prior to making a minor high school pupil available for questioning by a peace officer, to inform the pupil of the pupil's right to have a person, as prescribed, present during the questioning.

By requiring these local school officials to perform these functions, this bill would impose a state-mandated local program.

This bill would make a school officer or staff member who is present in the questioning immune from civil or criminal liability arising from participation in that questioning.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. The Legislature finds and declares all of the
2 following:

3 (a) Community policing and the presence of school resource
4 officers on school campuses serve a vital role fostering a safe
5 learning environment for pupils, faculty, and staff.

6 (b) In order to enable members of the law enforcement
7 community to more effectively fulfill this role, it is the intent of
8 the Legislature to encourage law enforcement officers to form
9 positive relationships with both parents and pupils who are part
10 of the school community.

11 (c) It is also vitally important that parents be given a
12 meaningful opportunity to be active and informed participants in
13 the educational lives of their children, including situations
14 involving issues of school discipline and interaction with
15 members of the law enforcement community in the school
16 setting.

17 (d) In furtherance of this objective, it is the intent of the
18 Legislature to increase the level of participation of parents when
19 their minor children are being questioned by law enforcement in
20 school or at a school-sponsored activity.

21 SEC. 2. Section 48906.5 is added to the Education Code, to
22 read:

1 48906.5. (a) (1) Before making an elementary school pupil
2 available to a peace officer for the purpose of being questioned
3 by a peace officer, the principal of the elementary school, or his
4 or her designee, shall take immediate steps to obtain the oral
5 consent of the parent ~~or guardian~~, *guardian, or responsible*
6 *relative* of the pupil to permit the questioning.

7 (2) If the parent ~~or guardian~~, *guardian, or responsible relative*
8 requests that the pupil not be questioned until he or she can be
9 present, the pupil may not be made available to the peace officer
10 for questioning until the parent ~~or guardian~~, *guardian, or*
11 *responsible relative* is present.

12 (3) If school officials are unable, after reasonable efforts
13 undertaken within a period not to exceed one hour, to contact a
14 parent ~~or guardian~~, *guardian, or responsible relative* in order to
15 obtain consent pursuant to this subdivision, a school
16 administrator, school counselor, or school teacher who is
17 reasonably available and selected by the pupil, shall be present
18 during the questioning.

19 (4) If the school administrator, school counselor, or school
20 teacher selected by the pupil declines to be present during the
21 questioning, the principal, or his or her designee, shall be present
22 during the questioning.

23 (5) In those cases in which school officials are unable to
24 contact the pupil's parent ~~or guardian~~, *guardian, or responsible*
25 *relative*, after the questioning has been completed, the principal
26 or his or her designee shall immediately notify the parent ~~or~~
27 ~~guardian~~, *guardian, or responsible relative* that the questioning
28 has occurred and make the staff member who was present during
29 the questioning available to inform the parent ~~or guardian~~,
30 *guardian, or responsible relative* about the questioning.

31 (b) (1) Before making a high school pupil under 18 years of
32 age available to a peace officer for the purpose of questioning by
33 the peace officer, the principal of the school, or his or her
34 designee, shall inform the pupil that the pupil has the right to
35 request that his or her parent ~~or guardian or an adult family~~
36 ~~member~~, *guardian, or responsible relative*, or person on the list
37 of emergency contacts for the pupil be present during the
38 questioning.

39 (2) If the person selected by the pupil cannot be made
40 available within a reasonable period of time, not exceeding one

hour, or declines to be present at the questioning, the principal or his or her designee shall inform the pupil that the pupil may select as an alternate, a school administrator, school counselor, or school teacher who is reasonably available to be present during the questioning.

(3) If the person selected by the pupil declines to be present during the questioning, the principal, or his or her designee, shall so inform the pupil and advise the pupil that the principal, or his or her designee, will be present during the questioning if the pupil so requests.

(4) If the pupil exercises his or her right pursuant to this subdivision to have one of the persons designated in paragraph (1), (2), or (3) present during the questioning, the pupil may not be made available to the peace officer for questioning until that person is present.

(c) If the pupil is a dependent child of the court, as described in Section 300 of the Welfare and Institutions Code, or a ward of the court, as described in Section 602 of the Welfare and Institutions Code, and the court has limited the right of a parent to make educational decisions for his or her child pursuant to Section 361 or 726 of the Welfare and Institutions Code, as applicable, the principal of the school, or his or her designee, shall seek parental consent as required by this section from the responsible adult or surrogate parent appointed for the pupil, instead of the parent as would otherwise be required by this section.

~~(e)~~

~~(d)~~ Subdivisions ~~(a) and (b)~~, (b), and (c) do not apply if any of the following conditions exist:

(1) The peace officer reasonably believes that, due to exigent circumstances, the inability of the officer to immediately question the pupil will materially interfere with the ability of the officer to conduct his or her investigation and there is a substantial risk that a suspect may not be apprehended or prosecuted in a timely manner. In that case, if an elementary school pupil is being questioned, the principal or his or her designee shall be present during the questioning and shall take immediate and continuous steps to notify the parent ~~or guardian,~~ guardian, or responsible relative by telephone about the questioning, and if unsuccessful in doing so before the

1 questioning, shall take immediate steps to notify the parent ~~or~~
2 ~~guardian~~, guardian, or responsible relative about the questioning
3 after the questioning has been completed. If a high school pupil
4 is being questioned, the pupil shall be given the option of having
5 the principal or his or her designee present during the
6 questioning.

7 (2) The peace officer reasonably believes that there is a
8 substantial risk of immediate personal injury or substantial
9 property damage. In that case, if an elementary school pupil is
10 being questioned, the principal or his or her designee shall be
11 present during the questioning and shall take immediate and
12 continuous steps to notify the parent ~~or guardian~~, guardian, or
13 responsible relative by telephone regarding the questioning, and
14 if unsuccessful in doing so before the questioning is completed,
15 shall take immediate steps to notify the parent ~~or guardian~~,
16 guardian, or responsible relative regarding the questioning after
17 it has been completed. If a high school pupil is being questioned,
18 the pupil shall be given the option of having the principal or his
19 or her designee present during the questioning.

20 (3) The minor pupil being questioned is suspected of being a
21 victim of child abuse as defined in Section 11165.6 of the Penal
22 Code, or the minor pupil is being questioned pursuant to Section
23 305 of the Welfare and Institutions Code, and either the principal
24 or his or her designee or the peace officer has reasonable belief
25 that the pupil would be endangered by the notification
26 requirements of subdivision (a) or (b). In that case, if the pupil is
27 an elementary school pupil, the principal of the school, or his or
28 her designee, shall inform the pupil that the pupil has the right to
29 select a school administrator, school counselor, or school teacher
30 who is reasonably available to be present during the questioning,
31 as provided in paragraphs (3) and (4) of subdivision (a). If the
32 pupil is a high school pupil, the principal of the school, or his or
33 her designee, shall inform the pupil that the pupil has the right to
34 select another person to be present during the questioning, as
35 provided in subdivision (b).

36 (4) (A) In the case of an elementary school pupil, the peace
37 officer's questioning of the pupil concerns the commission of
38 criminal activity by the person who would otherwise be present
39 during the questioning pursuant to subdivision (a). In that case,
40 the principal of the school, or his or her designee, shall inform

1 the pupil that the pupil has the right to select a school
2 administrator, school counselor, or school teacher who is
3 reasonably available to be present during the questioning as
4 provided in subdivision (a).

5 (B) In the case of a high school pupil, the peace officer's
6 questioning of the pupil concerns the commission of criminal
7 activity by the person selected by the pupil pursuant to
8 subdivision (b). In that case, the principal or his or her designee
9 shall so inform the pupil and advise the pupil that he or she may
10 select another person to be present during the questioning, as
11 provided in subdivision (b).

12 (5) The pupil is on probation or parole and is being
13 interviewed or otherwise contacted by a probation or parole
14 officer in the normal course of duties of the probation or parole
15 officer.

16 ~~(d)~~

17 (e) Except in exigent circumstances as determined by the
18 peace officer, any questioning of a pupil by a peace officer for
19 any reason other than the ordinary, day-to-day conversation that
20 is to be expected among members of a school community, shall
21 take place in a private location, including, but not limited to, the
22 principal's office, and may not take place in a classroom or
23 hallway or other areas where pupils or others may be present.

24 ~~(e)~~

25 (f) A school official present during the questioning of a pupil
26 under this section may not disclose matters discussed with the
27 pupil other than to the parent ~~or guardian~~, *guardian, or*
28 *responsible relative* of the pupil, the attorney for the pupil, other
29 school officials, or a court.

30 ~~(f)~~

31 (g) Any school officer or staff member present at the
32 questioning of the pupil by a peace officer pursuant to this
33 section is immune from civil or criminal liability arising from his
34 or her participation during the questioning of the pupil.

35 ~~(g)~~

36 (h) The failure of school officials to comply with this section
37 does not render any evidence, otherwise lawfully obtained by a
38 peace officer, inadmissible in a court of law or result in any other
39 sanction in a criminal trial.

40 ~~(h)~~

1 (i) For the purposes of this section, “questioning” means only
2 formal questioning in which the principal or his or her designee
3 makes a pupil available to a peace officer, at the request of the
4 peace officer, the principal or his or her designee, for questioning
5 as a victim, suspect, or person with information concerning a
6 suspected violation of a school rule that constitutes grounds for
7 expulsion or a suspected commission of a crime. For the
8 purposes of this section, “formal questioning” means only
9 questioning of a pupil by a peace officer that occurs on school
10 grounds. “Formal questioning” does not include ordinary,
11 day-to-day conversations between a pupil and a school resource
12 officer or peace officer.

13 ~~(i)~~

14 (j) For the purposes of this section, “elementary school
15 pupils” are the pupils who are enrolled in kindergarten or any of
16 grades 1 to 8, inclusive. “High school pupils” are the pupils who
17 are enrolled in any of grades 9 to 12, inclusive.

18 SEC. 3. If the Commission on State Mandates determines that
19 this act contains costs mandated by the state, reimbursement to
20 local agencies and school districts for those costs shall be made
21 pursuant to Part 7 (commencing with Section 17500) of Division
22 4 of Title 2 of the Government Code.